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Special Financial Report No. 1
February 2003

to the Legislative Assembly
of British Columbia

Funding the Office of the Ombudsman

A Special Financial Report to the Legislative Assembly of British Columbia

Ombudsman
British Columbia

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Ombudsman

Legislative Assembly
Province of British Columbia

February 19, 2003

The Honourable Claude Richmond
Speaker of the Legislative Assembly
Parliament Buildings, Room 207
Victoria, BC V8V 1X4

Dear Mr. Speaker:

Under the authority provided in section 8 (3)(a) of the ***Ombudsman Act***, I am transmitting herewith to the Legislative Assembly this Special Financial Report. This is the first time, in the history of the Office of the Ombudsman, that it has become necessary to make a report of this nature, indicating that the funding provided for the Office in the estimates is inadequate to enable the fulfilment of the duties of the Office.

Yours truly,

Howard Kushner
Ombudsman
Province of British Columbia

Funding the Office of the Ombudsman

A Special Financial Report
to the Legislative Assembly of British Columbia

For the first time in the history of the Office of the Ombudsman, a Special Financial Report under section 8 (3)(a) of the ***Ombudsman Act*** advising of inadequate funding for the Office must be made. Section 8 (3)(a) provides that:

> 8 (3) The Ombudsman may make a special report to the Legislative Assembly if the Ombudsman believes
> (a) the amounts and establishment provided for the office of the Ombudsman in the estimates...
> are inadequate to enable the Ombudsman to fulfil the duties of the office.

Funding for the Office of the Ombudsman is established by the Legislative Assembly, based upon a recommendation of the Select Standing Committee on Finance and Government Services. The recommendation of that Committee, first made in December 2001 and reconfirmed in December 2002, will seriously affect the ability of the Office of the Ombudsman to fulfil its statutory mandate as set out in the ***Ombudsman Act***.

Although the Committee indicated in its December 2002 Report that it would be willing to review the situation should any Officer be unable to meet their statutory requirements, the information contained in this Special Financial Report was already provided to and considered by the Committee prior to its December 2002 report. Further, the ***Ombudsman Act*** specifically sets out in Section 8 (3)(a) the procedure to be followed should inadequate amounts be provided for in the estimates. The Committee also acknowledged that a special report to the Assembly might occur as a result of its recommendation. Accordingly, this Special Financial Report is therefore presented in order to assist and inform the Assembly as it begins its deliberations on budget estimates for the coming year and beyond.

The Role of the Ombudsman

The Ombudsman is an independent, impartial investigator of complaints concerning public agencies in British Columbia. Through use of extensive investigative powers, the Ombudsman is able to review what government and public bodies have done and how

they have acted in administering statutes, regulations and policies. Moreover the Ombudsman may make recommendations and try to encourage and effect settlements of matters giving rise to complaints. In so doing, the Ombudsman is an invaluable tool for citizen and government alike.

As the ***Ombudsman Act*** and its Schedule now stand, the Ombudsman has a mandate to investigate a broad range of authorities including such bodies as Ministries, School Boards, Hospitals, Health Authorities, Professional Regulatory Bodies, Local Governments and Crown Corporations. The ambit of authorities is wide as befits a desire to ensure fairness in administration throughout all venues of governmental activity in the province.

By scrutinizing the actions of executive government and other levels of government, the Ombudsman is able to explain governmental actions which have been appropriate and to bring independent reasoning and questioning to bear when such actions have been inappropriate. The Ombudsman is an important watchdog over the administrative action of government and other public authorities. Limiting Ombudsman resources limits the ability of the Ombudsman to investigate and ultimately limits the accountability of government and shades its transparency.

The Budget Submission of the Office of the Ombudsman

On November 6, 2002, I appeared before the Select Standing Committee on Finance and Government Services and presented the Office's Budget and some possible scenarios for the future. My written submission to the Committee is available on the Office's web site[1] and I shall not reproduce it here. Rather it is important to comment on key features of the submission in order to appreciate the nature and implications of the Committee's recommendations and report.

The Submission presented details on the Office's Goals and Core Business Areas, Performance Measures and Financial Measures and Plans. The focus here is on the Financial Plans although it is worthwhile noting that the Performance Measures and statements about Goals and Core Business have been developed over the last few years and represent both a contribution to the world of ombudsmanship and a renewal of the Office's outlook and sense of purpose.

[1] The Web Address for the Office site is http: www.ombudsman.bc.ca

The Financial Plan detailed four budget reduction options. It provided an overview of what the Office would look like and what type of complaints the Office would be able to investigate under each of the different funding options. The Office has always been mindful of the need for fiscal prudence and understands that many public institutions have been cut back, some severely. The Office realizes that it too will need to reduce its budget.

The four scenarios envisaged a least damaging option of a 10% reduction (with no loss of services) and a drastic reduction of 35% (with a significant loss of services). In the middle were two 15% reduction options with different timelines for implementation. The intent was to show the Committee and the public the effects of a severe reduction but also to present reasonable alternatives which would have seen the Office take reductions while still maintaining service to the public.

The Committee's Report and Recommendations

On December 13, 2002 the Select Standing Committee on Finance and Government Services issued its report on the finances of the Officers of the Legislature[2]. The Committee recommended that the Office be required to continue along a path which would see the budget reduced by 35% in fiscal 2004/05 from the budget of 2001/02. The Committee did not comment on the impact of the loss of service to the public or on the effect on the role of the Office generally. The Committee also indicated that if any Officer of the Legislature could not fulfil his/her statutory duty, s/he could return to the Committee for further reconsideration.

The specific recommendations pertaining to the Office of the Ombudsman were:

- *That the operating budgets of the Office of the Ombudsman be $4,092,250 in 2003/04 and $3,097,250 in 2004/05, reflecting the budget reduction targets made to the office's baseline budget ($4.765 million) that were approved by the Legislative Assembly on February 14, 2002.*
- *That the operating budget of the Office of the Ombudsman be maintained at $3,097,250 for the 2005/06 fiscal year, unless a compelling case can be made for additional funding for specific program activities.*

[2] Financial Review of the Independent Offices of the Legislative Assembly, December 2002.

- *That the Office of the Ombudsman be granted an annual capital budget of $92,000 in 2003/04 and $65,000 in 2004/05.*[1]

The recommendation regarding funding reflects a 35% budget reduction and also recommends maintaining of the 2005/06 budget at the same level as set for 2004/05. The rationale for the 35% reduction, given other budget options, remains unclear as does the recommendation for the 2005/06 fiscal year.

The possible reasoning behind the Committee's recommendations appears most clearly and succinctly in the following paragraph from the Committee's report:

> *The Ombudsman also observed that the 35 percent budget reduction is consistent with the recommendations the Committee made last year, which suggested restricting the scope of his jurisdiction to provincial institutions. Secondly, it is also consistent with an internal review of the office's workplan and workload undertaken by two in-house staff committees. Thirdly, the option is relatively efficient and easy to implement. Fourthly, its implementation would not require any legislative amendment to the Ombudsman Act or schedule, as the Ombudsman can exercise discretion on the basis of funding. However, implementation of the option could precipitate the filing of a special report to the Assembly to advise that the amounts provided in the estimates were inadequate to enable the Ombudsman to fulfil the duties of the office.*[2]

Unfortunately the paragraph quoted above might mistakenly convey the impression that the 35% reduction was favoured by the Ombudsman and that such a reduction is of no serious consequence. This is not the case.

It is true that a 35% reduction is consistent with the Committee's previous recommendation. That recommendation would see the Office limit its investigative authority to Provincial Ministries, Crown Corporations and Boards and Commissions. However it is respectfully submitted that the purpose of presenting options to the Committee was to give it an opportunity to evaluate the severe and drastic consequences of that previous recommendation and to reconsider the 35% reduction.

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[1] Ibid., pp.9,10.
[2] Ibid., p.9.

Further, to state that the 30% reduction is consistent with an internal workplan and review of the situation by internal Office committees is an unfortunate characterization of a planning process which the Office felt compelled to undertake. Out of prudence, the Office embarked on a planning process in the event that the 10% and 20% reductions would go ahead. This is a sound and rational approach to planning for eventualities but that should not be taken to imply that this was a preferred outcome nor that the Office had arrived at a position that 30% would do no harm to its operations.

While it may be true that by administratively choosing not to investigate complaints against certain authorities, a 30% reduction can be easily implemented, the impact of such an approach is significant and has serious effects on the Office, on the public and on the issue of accountability of public authorities.

Lastly, the seriousness of the impact is illustrated by the very fact that a Special Financial Report under s. 9(1)(b)(ii) of the *Ombudsman Act* is necessitated by the 30% reduction. Since the inception of the Office in 1979, under various governments of the Province, no previous government has so drastically reduced the budget of the Office such that complaints of administrative unfairness against certain public authorities cannot be investigated due to lack of adequate funding. Such a result raises questions about the current Government's commitment to ensuring fairness and accountability for the citizens of British Columbia in their interaction with public authorities.

The Consequences of a 30% Budget Reduction

The key features of a 30% reduction are as follows:

- **Reduction from 48 FTEs to 34 FTEs over 3 years or 40% of the office workforce that existed in 2001/02.**
- **Elimination of Deputy Ombudsman, Manager of Systems, and staff throughout the organization, including 11-12 investigative officers.**
- **Implementation of Shared Services between the Office of the Ombudsman and the Office of the Information and Protection of Privacy Commissioner in the areas of Systems support during 2002.**
- **Reduction of 25% of Vancouver office space in 2002.**
- **Closure of the Vancouver office to the public during fiscal 2002/03 with consolidation of most staff to the Victoria office.**

- A small office will be maintained in Vancouver as a matter of fact and for day to day use by sensitive cases. Most Assistant Investigative staff, as is true staff for the investigative and intake functions are contemplated to remain in the Lower Mainland with the option of telecommuting being supported. In addition, a full-time clerical position would be maintained for mail and file management in that office.
- An "800 line" intake capability will be provided in the Lower Mainland.
- Commencing January 1, 2003 and using the discretion provided in the Ombudsman Act, the Ombudsman will decline to investigate any complaints against Local Government Authorities and Professional Associations. Existing investigations of complaints against these authorities will be completed to the maximum extent possible by March 31, 2003. These authorities accounted for 10% of complaints investigated in 2001.
- Commencing January 1, 2004 and using the discretion provided in the Ombudsman Act, the Ombudsman will decline to investigate any complaints against most authorities other than Ministries, Crown Corporations and some Boards and Commissions. Ministries, Crown Corporations and Boards and Commissions accounted for 49% of complaints investigated in 2001. Included in the list of authorities about whom complaints will no longer be investigated are Schools and School Boards, Hospitals and Health Authorities, Colleges and Universities, and Workers Compensation Board.
- The number of investigative teams will be reduced from 6 to 5 in 2003/04 and from 5 to 4 during 2004/05 to reflect the reduction in the scope of authorities to be investigated.[1]

The reduction of service and capability outlined above is a serious limitation to the extent of the coverage of the Office of the Ombudsman. The withdrawal of investigations about a wide range of authorities important to the citizens of British Columbia, the loss of staff and their expertise and experience, and the closing of the Vancouver Office is the public as serious consequences. It is important for the Assembly and the public to know and consider the impact of such drastic cuts before the Assembly debates and approves the estimates for the Office of the Ombudsman.

[1] Office of the Ombudsman, Budget Submission – Fiscal 2003/04 – 2005/06, pp. 2-3.

[illegible]